

**REMARKS**

Reconsideration of the present application is respectfully requested.

**Substance of the Interview**

As an initial matter, the Applicant would like to thank Examiner Wong for her time and courtesy extended during the May 14, 2009 interview. The Applicant agrees that the summary as set forth in the Interview Summary, mailed by the Examiner on May 15, 2009, is correct. During the interview, the Applicant's representative and Examiner Wong discussed the application; in particular the cited reference (Record et al.) and the previously-submitted Declaration of Maura Titone. It was agreed that the Applicant would amend the claims to clarify that the composition is an "enhanced fruit flavoring composition", since Record's disclosure is silent as to any fruit flavor enhancement. The Examiner noted that this amendment would be entered after-final and appears to overcome the prior art of record. This Amendment reflects the discussions between the Applicant's representative and the Examiner.

**Response to the Office Action**

Claims 14, 18, 21 and 22 are currently pending in this application. Through this amendment, the pending claims have been amended to clarify that the composition is an "enhanced fruit flavoring composition". Support for this amendment may be found, for example, at the third paragraph on Page 4 of the application as filed. In support of this Amendment and Response, the Applicant relies upon the previously-submitted Declaration of Maura Titone, which was submitted on December 29, 2008.

In the Office Action, the Examiner rejected claims 14, 18, 21 and 22 under 35 U.S.C. §103(a) as allegedly obvious over Record (U.S. 5,372,824). The Examiner alleged that Record discloses the combination of flavor and N-ethyl-p-menthane-3-carboxamide ("WS-3") in the claimed amounts. According to the Examiner, it would have been obvious to "use any flavor in that of Record, because the choice of flavor is seen to be no more than a matter of choice." The Examiner stated that there has been no statement of criticality to the claimed flavor, and that "enhancement would be obvious to that of Record as the same components are used."

The claims of the present application have been amended to specifically recite an “enhanced fruit flavor”. In contrast, Record specifically involves the formation of a chewing gum providing a particular mint flavor, including a reduced menthol composition. The inclusion of reduced menthol to provide a mint flavor is the very basis of Record’s disclosure. Record discloses in detail a “mint flavored chewing gum having reduced bitterness.” (Col. 1, lines 63-64). Record goes on to state that the reduced bitterness chewing gum includes “a mint flavor agent from which at least a portion of l-menthol has been removed.” (Col. 2, lines 2-3). Record discloses that chewing gums can be made including other flavoring agents, but in each and every instance, the chewing gum includes the reduced menthol mint flavor. In fact, the particular section of Record referred to by the Examiner states that “a variety of flavoring agents can be used in combination with the mint flavor of the present invention.” (Col. 6, lines 20-21) (emphasis added). Thus, although other flavors may be included in Record’s chewing gum, the chewing gum must include the reduced menthol mint flavor. Record does not disclose or suggest a composition that provides an enhanced fruit flavor.

It should be noted that any chewing gum made in accordance with Record must include Record’s reduced menthol composition, as it would be improper to remove the reduced menthol composition from Record. Under *KSR*, and MPEP §2143(A), “the rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions.” (emphasis added). Further, MPEP §2143.01 states that “if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”

The present claims are directed to a chewing gum including an “enhanced fruit flavoring composition”, the enhanced fruit flavoring composition including WS-3 and a fruit flavoring. As stated above, Record does not disclose or suggest an enhanced fruit flavor. In

Application No.: 09/092,696  
Amendment and Response Dated May 21, 2009  
Reply to Final Office Action of March 5, 2009  
Docket No. 1421-50 RCE  
Page 6

fact, as set forth in the Declaration of Maura Titone (see, Samples 1 and 2), the inclusion of a fruit flavoring in combination with Record's reduced menthol composition does not provide an enhanced fruit flavor.

As set forth in the Titone Declaration at Table 2, the tests conducted on chewing gum Samples 1 and 2 (which each include menthol, fruit, and WS-3) provided a much lower fruit intensity level than that of the other Samples. This shows that the hypothetical addition of fruit flavor to Record's mint chewing gum actually reduces the fruit flavor in the chewing gum. Indeed, the inclusion of fruit flavor in addition to Record's menthol composition resulted in an extremely unpleasant and commercially unsuccessful chewing gum, described by one panelist as tasting like a Band-aid. (See Titone Declaration, paragraphs 18-19). Thus, not only does Record's disclosure fail to disclose or suggest an enhanced fruit flavor, it has been demonstrated by the Applicant that the inclusion of fruit flavor to Record's mint composition does not provide an "enhanced fruit flavor", as is currently claimed.

Since Record fails to disclose or suggest an enhanced fruit flavoring composition, it is respectfully submitted that claims 14, 18, and 21-22 are not obvious over Record. Applicant states that this rejection has been overcome, and requests withdrawal of the rejection.

Favorable action is earnestly solicited. If there are any questions or if additional information is requested, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,

/Jon A. Chiodo/  
Jon A. Chiodo  
Registration No. 52,739  
Attorney for Applicant

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700